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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,781	11/10/2003	Satoshi Mizutani	20050/0200483-US0	4387
7278	7590	06/21/2005		EXAMINER
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257				BUI, LUAN KIM
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/705,781	MIZUTANI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Luan K. Bui	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 May 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 and 12-17 is/are pending in the application.  
 4a) Of the above claim(s) 3,4,7,13 and 15-17 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,5,6,8-10,12 and 14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/19 &amp; 6/8 &amp; 7/8/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

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1. Claims 3, 4, 7, 13 and 15-17 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant's election without traverse of Group I (Figures 1-7) in the reply filed on 5/26/2005 is acknowledged. Applicant indicates claim 14 reads on the elected embodiment of Figures 1-7 is noted. However, claim 14 recites "said cover has an angular shape extending toward both sides of said main body from one part of said unwrapping part as a vertex" and since the elected embodiment clearly has no such vertex. Therefore, claim 14 is deemed not to read on the elected embodiment. However, claim 14 will be treated in this Office Action but Applicant is required to provide support for such phrase as indicated above. Otherwise, claim 14 will be withdrawn in the next Office Action.

*Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "container on which a series of sheets for wrapping is wound" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

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be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because the sectional views A-A in Figure 1 should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view (MPEP 608.02(h)(3)). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. Figures 21 and 22 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

6. The specification is objected to under 37 CFR 1.71, as the specification, as originally filed, does not provide support for the new matter as claimed. The specification as filed does not provide support for "has a fine projection at least on an internal surface of said main body" as in claim 5, because the specification only discloses fine projection on an internal surface of said main body (see Figure 3).

7. Claim 5 is rejected under 35 USC 112, first paragraph, for the reasons set forth in the objection to the specification.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1, 2, 5, 6, 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "containing said interlabial pad" in claims 1 and 5 is confusing and indefinite because it is not clear whether Applicant is claiming the individual wrapping container only or a combination of individual wrapping container and an interlabial pad. Clarification is required. The phrase "a cut off portion" in claim 1 lacks proper antecedent basis because the specification fails to provide such phrase.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Leeker (H1363). Leeker discloses an individual wrapping container (50) comprising a main body (52, 54) containing an interlabial pad (20) and a cover (56) that covers a part of the main body. The

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cover forming an unwrapping portion at an end edge portion (next to 66) to be unwrapped to open the wrapping container and the cover is shaped to have a cut off portion at a place where the individual wrapping container is held (54 in Figure 4) when the individual wrapping container is opened. An area where the individual wrapping container is held considered equivalent to a predetermined region where a finger of a wearer is applied. As to claims 8 and 9, Leeker discloses a resealable sealing means (58, 60) on a portion where the cover and the main body are brought into contact and the sealing means (60) has a dry edge.

12. Claims 1, 2 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Srinivasan et al. (3,973,567; hereinafter Srinivasan'567). Srinivasan'567 discloses an individual wrapping container (10) comprising a main body containing a interlabial pad (30) and a cover (36) that covers a part of the main body. The cover forming an unwrapping portion at an end edge portion (46, Figure 6) to be unwrapped to open the wrapping container and the cover is shaped to have a cut off portion at a place where the individual wrapping container is held (46, Figure 6) when the individual wrapping container is opened. An area where the individual wrapping container is held considered equivalent to a predetermined region where a finger of a wearer is applied.

13. Claims 1, 2, 8, 9, 10 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Farris et al. (6,131,736; hereinafter Farris'736). Farris'736 discloses an individual wrapping container (40) comprising a main body containing a interlabial pad (20) and a cover (one side of the container) that covers a part of the main body (the other side of the container). The cover forming an unwrapping portion at an end edge portion (55) to be unwrapped to open the

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wrapping container and the cover is shaped to have a cut off portion at a place where the individual wrapping container is held when the individual wrapping container is opened. An area where the individual wrapping container is held considered equivalent to a predetermined region where a finger of a wearer is applied. As to claim 2, Farris'736 discloses an end edge portion of the cover is inclined to a bottom side of the individual wrapping container (Figure 4). As to claims 8 and 9, Farris'736 discloses a resealable sealing means (36) on a portion where the cover and the main body are brought into contact and the sealing means (60) has a dry edge (55). As to claim 14, Farris'736 discloses the cover has an angular shape extending toward both sides of the main body from one part of the unwrapping part as a vertex (next to 55).

14. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by the published Japanese Patent Application No. 2000-051265 to Kao Corp (hereinafter Kao Corp). Kao Corp discloses an individual wrapping container (1, 3) comprising a main body containing a interlabial pad (2) and a cover that covers a part of the main body (Figure 4). The cover forming an unwrapping portion at an end edge portion to be unwrapped to open the wrapping. Kao Corp further discloses an internal surface (6) of the main body comprises a fine projection (page 5, paragraph 0011).

15. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Akemi et al.(5,505,306; hereinafter Akemi'306). Akemi'306 discloses an individual wrapping container (6) comprising a main body (bottom side in Figure 21) and a cover (top side in Figure 21) that covers a part of the main body. The cover forming an unwrapping portion at an end edge portion

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(7) to be unwrapped to open the wrapping. Akemi'306 further discloses an internal surface of the main body comprises a fine projection (5, column 5, lines 26-31). The wrapping container of Akemi'306 is inherently capable of wrapping an interlabial pad.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al. (3,973,567; hereinafter Srinivasan'567) or Farris et al. (6,131,736; hereinafter Farris'736). Either Srinivasan'567 or Farris'736 discloses the individual wrapping container as above having all the limitations of the claims. It appears that a dimension in the longitudinal direction of the individual wrapping container of either Srinivasan'567 or Farris'736 is in a range of 105-130% of a dimension in the longitudinal direction of the interlabial pad. To the extent that Srinivasan'567 or Farris'736 fails to disclose the range as claimed, it would have been obvious to one having ordinary skill in the art at the time the invention was made in view of either Srinivasan'567 or Farris'736 to modify the size of the container so the container comprises a ranged of 105-130% of a dimension in the longitudinal direction of the interlabial pad to reduce the material and reduce the cost of manufacture.

***Double Patenting***

18. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

19. Claims 1, 2, 5, 6, 8-10, 12 and 14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent Application No. 10/705,669. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structural limitations in the claims of the instant patent application are fully disclosed and claimed by the copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb  
June 20, 2005



Luan K. Bui  
Primary Examiner